

WHEREFORE, it is respectfully requested the Willson's Third  
Petition to Enlarge Issues be granted.<sup>3</sup>

Respectfully submitted,

GARY E. WILLSON

GAMMON & GRANGE  
8280 Greensboro Drive  
Seventh Floor  
McLean, VA 22102-3807  
(703) 761-5000

By A. Wray Fitch III  
A. Wray Fitch III  
His Attorney

August 10, 1993

[0068/C93awfRepOpp3]

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<sup>3</sup> Requested Issue 1 should be revised to include a further inquiry whether Moonbeam and/or Mary Constant has lacked candor or made representations by failing to timely disclose the suspension of Ms. Constant's real estate license.

EXHIBIT 1

COPY

**TRANSCRIPT OF PROCEEDINGS**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**IN RE APPLICATIONS OF:**

**MM DOCKET NO. 93-42**

**MOONBEAM, INC.  
and  
GARY E. WILLSON**

**Calistoga, California**

**DATE OF HEARING: July 21, 1993**

**VOLUME: 2**

**PLACE OF HEARING: Washington, D.C.**

**PAGES: 7-170**

**FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

-----)  
In re Applications of: )

MOONBEAM, INC. )

AND )

GARY E. WILLSON )

Calistoga, California )  
-----)

MM DOCKET NO. 93-42

The above-entitled matter came on for hearing pursuant to notice before Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Wednesday, July 21, 1993, at 10:02 a.m.

APPEARANCES:

On behalf of Gary E. Willson:

JAMES A. GAMMON, Esquire  
A. WRAY FITCH III, Esquire  
Gammon and Grange, P.C.  
Seventh Floor  
8280 Greensboro Drive  
McLean, Virginia 22102-3807

On behalf of the Moonbeam, Inc.:

LEE W. SHUBERT, Esquire  
SUSAN H. ROSENAU, Esquire  
Haley, Bader and Potts  
Suite 900  
4350 North Fairfax Drive  
Arlington, Virginia 22203-1633

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1 to help you prepare an application for Calistoga, California,  
2 which subsequently was filed in November of 1991.

3 A My husband was aware that I called Mr. Shubert and I  
4 called Mr. Klein. But he wasn't advising me.

5 Q No, I didn't, I didn't ask you that. How did he  
6 become aware?

7 A I'm sorry. I meant -- when you have a conversation  
8 with somebody, it's either just a casual conversation or it's  
9 a conversation where information is exchanged. I only meant  
10 that I had mentioned that I called Mr. Klein and Mr. Shubert.

11 Q And my question was, how did your husband become  
12 aware and I guess your answer is because you told him?

13 A That's right. We live in the same house.

14 Q All right. I, I'm not trying to trap you. If you  
15 just try to listen to the question and then just answer that,  
16 I'll move onto the next question and we'll move along better.

17 A Okay.

18 Q And we'll have a cleaner record if you don't mind.

19 A Okay. Thank you.

20 Q Okay. Well, how did you inform your husband that  
21 you were about to go into this venture? Did you -- did --  
22 strike that. Did you mention it to your -- that -- your  
23 desire to go into this venture before you contacted Mr.  
24 Shubert and Mr. Klein?

25 A I'm sorry. I don't have a video tape of it in my

1 mind.

2 Q Does that mean you don't know?

3 A I'm sorry. I don't remember.

4 Q So that you might have engaged the services of  
5 engineering and legal counsel before you even made your  
6 husband aware that you were going to?

7 A That's right. I may have called Mr. Shubert before  
8 I even talked to my husband.

9 Q And Mr. Klein? Both?

10 A I probably, probably talked to, talked to my husband  
11 about the fact that it was in Calistoga before I called Mr.  
12 Klein.

13 Q Probably or you did?

14 A I don't remember.

15 Q Did Mr. -- did your husband recommend or affirm  
16 your, your use in any way of Mr. Shubert and Mr. Klein?

17 A I think he did.

18 Q And by what, by what means did he do that?

19 A I think he thought it was a great idea.

20 Q And how do you know he thought it was a great idea?

21 A He was excited about moving to the Napa Valley as  
22 well as I was.

23 Q How do you know he was excited about moving to the  
24 Napa Valley?

25 A Well, because we planned to live together now and in

1 A Petaluma is about ten miles --

2 Q Ma'am, just answer yes or no. Please. Please.

3 MR. SHUBERT: Your Honor, can we instruct counsel  
4 not to argue with the witness, please?

5 MR. GAMMON: Your Honor, you see what's happening?  
6 It's a yes/no question.

7 BY MR. GAMMON:

8 Q Is Petaluma outside the proposed service area or is  
9 it not?

10 A According to your map, it is outside the area.

11 Q According to your map, it's outside, isn't it?

12 A I'm assuming we're using the same map. I'm sorry.

13 Q Well, it's outside. We don't have to argue about  
14 that, do we?

15 A You're arguing. I'm not.

16 Q Okay. Now, I'm talking about the inside, you see?  
17 How did you come to tell the FCC and Mr. Willson and anybody  
18 else that wanted to view your application and its strengths or  
19 weaknesses, how did you come to say that you had local  
20 residence in the past within, within the service area?

21 A I would consider Petaluma to be within the service  
22 area. I'm sorry. I misunderstood the question.

23 Q Okay. That's fine. And -- but you know it's  
24 outside the service area, don't you?

25 A I do now.

1 Q Oh. Then you thought it was within? Is that what  
2 you're telling us? In March 2 of '92?

3 A I wasn't sure. Could I give you an example?

4 Q Well, if you just say you weren't sure, that's fine.  
5 I'll go on.

6 A No, I'll give you -- can I give you --

7 Q Your counsel can pick up with examples.

8 A I wasn't sure.

9 Q Okay. How could you say this to the FCC, Mr.  
10 Willson, and everyone else when you weren't sure? You were  
11 trying to be as accurate as possible.

12 A That's right. I said I was.

13 Q Well -- but you weren't even sure. How could you  
14 make a positive statement like this? What was your, what was  
15 your mental reasoning?

16 A I'm sorry. I can't answer that question.

17 Q Okay. Paragraph 2 -- well, look here. Paragraph 2,  
18 the, the third sentence, it said -- says, she lived in Santa  
19 Rosa, Sonoma County, California, while attending college at  
20 Sonoma State University, Santa Rosa, California. Do you see  
21 that language?

22 A As I told you, that was a mistake and it was later  
23 amended.

24 Q Where -- well, first, where was it amended?

25 A It was amended in the application.



1 KFTY in Santa Rosa. You see that?

2 A Yes. I --

3 Q That's your testimony, wasn't it?

4 A I knew -- the main -- I don't know where the main  
5 studio is going to be in Calistoga, but I know where the --  
6 where auxiliary studio can be in Santa Rosa.

7 Q And that's what you intend to convey by the --  
8 please be careful.

9 A I'm sorry. I was very nervous and I was just trying  
10 to answer a question. It's the first time I had been ever  
11 deposed.

12 Q Have you rehearsed this?

13 A No, I haven't.

14 Q No, no, wait.

15 A I am sorry. I have not been on a stand like this  
16 very often in my life either.

17 Q I understand. May I talk? Please.

18 A It's your -- you're the expert.

19 Q Okay. Did you talk to anybody about what you'd say  
20 about the main studio question before you came up here today  
21 to testify and before you sat on this witness stand?

22 A No.

23 Q Your counsel didn't go over that with you?

24 A We went over my deposition with me and at the time  
25 we went over the deposition, he gave you a list of the things

1 is not what you said at the deposition. Isn't that right?

2 A It's something that I should have said at the  
3 deposition because it would have been the truth.

4 Q Would you like my question read back to you, ma'am?

5 MR. SHUBERT: Your Honor --

6 JUDGE LUTON: We're going to beat this to death.

7 What you're saying I take it, Ms. Constant, is that the  
8 correction is the testimony that you intended to give at the  
9 deposition. Is that right?

10 WITNESS: Yes.

11 MR. GAMMON: Did you really intend to give that  
12 testimony at the deposition? Or were you really saying we're  
13 going to have a studio at KFTY and that will be the main  
14 studio and now you realize that's not a good answer?

15 MR. SHUBERT: That's a compound question, Your  
16 Honor. I will object.

17 JUDGE LUTON: That's all right. If the witness  
18 understands it, so what! It's compound. You may respond.

19 WITNESS: I don't know why I would have given that  
20 answer if that was what I intended at the deposition, if it  
21 wasn't going to be true.

22 MR. GAMMON: All right. All right. Let me go onto  
23 something else, Your Honor, if I may.

24 BY MR. GAMMON:

25 Q Oh, yes. When did you find out that the Calistoga

1 the fact of a conversation your husband had with him about  
2 your application.

3 A Yes, I saw that.

4 Q Did -- what did your husband say about that when you  
5 asked him?

6 A When I asked him what?

7 Q When you asked him, what about this conversation  
8 Willson says he had with you?

9 A The purpose of my husband's call was -- this was  
10 going to cost a lot of money as it has been costing a lot of  
11 money for both myself and Mr. Willson and he was just playing  
12 the part of arbitrator.

13 Q He told you that? Your husband?

14 A Yes.

15 Q Did he tell you he was going to call Mr. Willson?

16 A Yes, he did.

17 Q And what did you say to that?

18 A That's fine. If Mr. Willson would like to settle  
19 before today, I would have been very happy to have.

20 Q Did your husband have a copy of your application so  
21 he could speak knowledgeably about it?

22 A I don't think he did.

23 Q Did he have access to a copy? Was there one at the  
24 home?

25 A I'm sure there was. He didn't -- wasn't using -- I

1 Q Do you have any -- is there anything there of your  
2 own knowledge you know -- some things may be inaccurate.

3 because you don't have any knowledge of them, but of your own  
4 knowledge is there anything there that you know is inaccurate?

5 A Not that I can see.

6 Q All right.

7 MR. GANNON: Your Honor, I ask that Exhibit 3 be  
8 received.

9 MR. SHERBERT: Objection, Your Honor.

10 JUDGE LUTON: All right. What basis? This is  
11 objection -- rather, this Exhibit 2 I thought you said.

12 MR. GANNON: I'm sorry. Sure it is.

13 JUDGE LUTON: Exhibit 2.

14 MR. GANNON: Exhibit 2, I beg your pardon.

15 JUDGE LUTON: Okay. Let's hear the objection.

16 MR. SHERBERT: The objection is one on relevance and  
17 two, the meeting that was held in my office with Mr. Fitch we  
18 agreed that any of the settlement discussions would be  
19 confidential amongst the parties. And we -- that was a  
20 condition of negotiating settlement, Your Honor, and to admit  
21 this into evidence now flies in the face of a time-honored  
22 tradition of trying to maintain the confidentiality of  
23 settlement negotiations in order to promote a resolution of  
24 proceedings.

25 MR. GANNON: Well, Your Honor, this doesn't recount

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1 with my husband and friends in a casual way most people  
2 discuss business with people close to them."

3 MR. GAMMON: Now, I'm a little slow on this because,  
4 of course, I just got it this morning. How are you changing  
5 all that language? How are you proposing to change all that  
6 language I read to you where you, if you will, evaded the  
7 answer.

8 MR. SHUBERT: Objection, Your Honor.

9 MR. GAMMON: I don't know any gentler way to put it,  
10 Your Honor, and be accurate.

11 JUDGE LUTON: I'm sorry --

12 MR. SHUBERT: I don't think there's anything evasive  
13 in there for, for starters.

14 JUDGE LUTON: Well, there's -- there seems to be, as  
15 I read this thing for the first time, there certainly seems to  
16 be and I have no hesitation of saying it, a determined effort  
17 to avoid answering the question -- the questions that were  
18 asked. Have you discussed with your husband filing this  
19 application? I've discussed it with my attorney. Still  
20 asking about the husband. And you haven't discussed it with  
21 your husband? Still asking about the husband. Well, we do  
22 live in the same house. Well, then the answer is, I mean we  
23 haven't had big discussions about it. Presumably, you've had  
24 little ones then, but you have had discussions about it?  
25 Well, we discuss a lot of things every day. If that kind of

1 testimony doesn't indicate evasiveness, I don't know what  
2 does.

3 MR. SHUBERT: Well --

4 JUDGE LUTON: I'm sorry. I'm not going to overrule  
5 that objection. I'm going to permit the question to stand and  
6 an answer be given.

7 BY MR. GAMMON:

8 Q The question, ma'am, I know is difficult to hold in  
9 your head. What are you telling us in this -- what language  
10 do you want to chan -- are you trying to strike some language  
11 in this answer or --

12 A No. I'm trying to clarify that I had discussed the  
13 application, the, the form with my husband.

14 Q We have Exhibit 3 in front of us.

15 MR. GAMMON: By the way, Your Honor, I ask that  
16 Exhibit 3 be received.

17 JUDGE LUTON: Objections?

18 MR. SHUBERT: Objection, Your Honor?

19 JUDGE LUTON: Yes.

20 MR. SHUBERT: It's taken out of the -- the  
21 deposition is being taken out of context. It doesn't prove  
22 anything relevant to the issues that we are trying. The, the  
23 witness is here to examine as to whether or not she's talked  
24 with her husband. Is he trying to impeach the witness with  
25 this? If he's not trying to impeach it, there's no purpose

1 Where are we with respect --

2 MR. GAMMON: Your Honor, in a, in a dramatic show of  
3 cowardice, I'd like to withdraw the, the offer of this  
4 exhibit.

5 JUDGE LUTON: All right. All right. Three will be  
6 withdrawn.

7 (Whereupon, Willson Exhibit 3 was  
8 withdrawn.)

9 BY MR. GAMMON:

10 Q Now, tell me about your transcript correction.  
11 Using the deposition transcript, pages 97 and 98, what are you  
12 really chan -- what are you adding and what are you  
13 subtracting to this answer on 97 and 98, ma'am, that I've  
14 quoted you in the record? How do you want it to end up  
15 reading if your transcript correction is accepted?

16 A I wanted you to understand --

17 Q No, no. What specific language changes? Never mind  
18 the whys and wherefores for now.

19 A The specific language changes?

20 Q Yeah.

21 A I discussed this proceeding with my husband and  
22 friends the casual way most people discuss business with  
23 people close to them.

24 Q Where does that go? On transcript 97 and 98. You  
25 reference this here to line 21, but then it looks like you're

1           A     Whatever construct-- other construction needs to be  
2 constructed.

3           Q     Have you finished your answer?

4           A     Yes.

5           Q     All right. Did you discuss -- did your husband  
6 discuss a proposed site for your application with Len Pringle?

7           A     No.

8           Q     How do you know that?

9           A     Because I've discussed it with him since then. Your  
10 continued line of, of questioning has been trying to show that  
11 my husband is directly involved with my radio station, which  
12 he is not. I'm sorry if I appear defensive, but --

13          Q     No. I'm just asking how you know that?

14          A     Because I've asked him.

15          Q     Thank you. Has your husband ever discussed site  
16 with you, your proposed site or sites -- either site with you?

17          A     Where I live in Calistoga, we both look at that site  
18 every day. It -- we -- our house directly faces Mount Saint  
19 Helena, so yes we have discussed the site. It's part of our  
20 landscape.

21          Q     You've discussed it only in terms of it being a  
22 landmark you can look at?

23          A     We've just discussed it in terms of that's, that's  
24 where my tower is going, is going to be or is.

25          Q     Do you have any information at all that your husband



1 are presently licensed as a realtor in California with James  
2 E. Warren and Son realtors in Saint Helena. Do you see that?

3 A Yes.

4 Q And your license is actually -- as I read this, your  
5 license is held by the Warren Company. Is that right?

6 A Yes, it is.

7 Q Is that because to, to function as, as a realtor you  
8 need a license and your broker has to hold the license?

9 A Yes. I don't have the ability to sell or list real  
10 estate without being under the auspices of a licensed broker.

11 Q Because you're licensed to sell under a broker, but  
12 you're not licensed to be a broker?

13 A That's right.

14 Q Okay. And -- oh, I see. The purpose of putting  
15 this in is because Saint Helena's located within 1 mV contour  
16 of your station. Is that it?

17 A That's right. Where I was planning to move.

18 Q All right. How do you know that you have a, a real  
19 estate license?

20 A I received it in the mail. And I was eligible and I  
21 did join the Napa Vall-- the Napa County Board of Realtors who  
22 also had to receive the same paperwork.

23 Q And do you actually have any functioning job  
24 function with the Warren Company?

25 A I'm an active realtor there.

1 Q Oh, you are? What's the last thing you did as an  
2 active realtor at the Warren Company?

3 A Being an active realtor doesn't mean I'm actively  
4 going out and looking or listing real estate every day. I  
5 have functioned as a realtor who's been showing property in  
6 the area.

7 Q When was the last time you did anything like that?

8 A A couple of weeks ago. I have a client who's  
9 interested in buying some land in Calistoga.

10 Q Well, would there be sanctions if you had not been  
11 licensed for you to do that kind of thing?

12 A I'm sorry. I don't understand what you said?

13 Q Well, if you didn't have a real estate license, an  
14 operative real estate license, you couldn't do that. It would  
15 be against the law, wouldn't it?

16 A You know, I don't know. I don't know what the items  
17 are. I'm not familiar with the law. I'm just another citizen  
18 showing someone else property.

19 Q You're a realtor showing someone else property?

20 A Right. You were, you were supposing that if I  
21 didn't have a realtor's license. Is that what you're saying?  
22 I don't know the consequences.

23 MR. GAMMON: Your Honor, I ask you to identify as  
24 Willson Exhibit 4 a one-page document and I ask for permission  
25 to hold one back from the reporter, Your Honor. We're running

1 JUDGE LUTON: I don't --

2 MR. SHUBERT: Ask you to reconsider your --

3 JUDGE LUTON: Reconsider? The, the witness has --

4 WITNESS: Excuse me. I, I'm sorry. I didn't  
5 receive -- I received this information. I didn't receive  
6 these documents. Someone created these, these documents.

7 MR. SHUBERT: That's precisely the point, Your  
8 Honor.

9 WITNESS: The real estate office --

10 JUDGE LUTON: But the information that one derives  
11 from the documents, is it true or false?

12 WITNESS: The information is true.

13 MR. SHUBERT: It's already in the record, Your  
14 Honor. She testified to it.

15 JUDGE LUTON: Then the documents won't hurt. I'm  
16 going to receive them -- 4 and 5 are received.

17 (Whereupon, the documents referred to  
18 as Willson Exhibit Nos. 4 and 5 were  
19 received into evidence.)

20 MR. GAMMON: May I have a moment, Your Honor?

21 JUDGE LUTON: Yes.

22 BY MR. GAMMON:

23 Q Take a look at transcript 43 and 47 -- 43 through  
24 47, please, of your deposition. This deposition was given in  
25 early June of this year. When you gave these answers about

1 | your, your job function and all with the Warren Realty  
2 | operation, you were aware that your license had been  
3 | suspended, weren't you?

4 |       A     No, because actually this actually got -- the  
5 | information actually got to me late because I think they're  
6 | still sending it to my old address in Nicasio. Actually it  
7 | does have the Nicasio address on it. Reinstating it is a  
8 | matter of taking a class that will take about two days and  
9 | sending the information to Sacramento. It's a very rote thing  
10 | in the real estate world.

11 |       Q     Well, when did you rec -- the best you can tell us,  
12 | when did you receive the notice, the May notice, that you're  
13 | license -- real estate license had been suspended?

14 |       A     Well, I don't know. It said that it was issued on  
15 | the end of May, so it probably took at least, knowing Nicasio,  
16 | it probably took at least a week to get to me. I think they  
17 | hold the mail and then bundle it up and send it once a month.

18 |       Q     So it would have been some time around your  
19 | deposition time?

20 |       A     It would have been after the deposition.

21 |       Q     After the deposition. Over a month ago?

22 |       A     Over a month ago.

23 |       Q     Did you submit any transcript corrections to the  
24 | deposition or clarification at all to let us know that it was  
25 | really suspended?

EXHIBIT 2

8814241

OREGON

## REAL ESTATE MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

That Frederic W. Constant (individually) as owner, and Mary Fairbanks Constant  
(to the extent of her community property interest, if any)

, hereinafter called Mortgagor, whether one or more, has mortgaged,  
and hereby mortgages, to GLENFED Financial Corporation, 12720 Hillcrest Road, Suite 700,  
Dallas, Texas 75230

Hereinafter called Mortgagee, whether one or more, the following described real estate and premises, situate in Lane

County, Oregon: XXXXXX, to-wit:

STREET ADDRESS: The Mathews House  
231 East Pearl Street, Coburg, Oregon

LEGAL DESCRIPTION: Lot 1 and Lot 2, except the South 10.0 feet of  
Lot 2, Block 4, Delaney's Addition to Coburg  
as platted and recorded in Book 25, Page 298,  
Lane County, Oregon Deed Records in Lane County,  
Oregon

2032A001 04/13/88PFND 10.0  
\*\*0003\*\*

2032A001 04/13/88 REC 15.0  
\*\*0003\*\*

with all the improvements thereon and appurtenances thereunto belonging; and warrant the title to the same.

This mortgage is given to secure the payment of the principal sum of (\$2,900,000) TO MILLION NINE HUNDRED THOUSAND  
dollars, and interest thereon, according to the terms of certain promissory note XXXXXX  
by the corporations listed on the  
the final payment thereon being due September 28, 1992 attached copy of the Note, marked  
Exhibit A.

The mortgagor further agrees to maintain insurance acceptable to, and for the benefit of, the mortgagee, upon the buildings on said premises in an amount not less than the indebtedness due the mortgagee. The mortgagor further agrees to pay all taxes and assessments upon said premises before the same become delinquent, and to keep the premises free of any liens or claims which might become prior to the lien hereof. In event of the failure of the mortgagor so to do, the mortgagee may effect insurance or pay such taxes, assessments or other liens, and shall have a lien secured hereby for the amount thereof with interest thereon at the rate of ten per cent, per annum.

In event the mortgagor defaults in the payment of said indebtedness, or fails to perform the other covenants and agreements hereof, the mortgagee may foreclose this mortgage, as provided by law; and as often as any proceedings may be taken to foreclose this mortgage, the mortgagor agrees to pay to the mortgagee a sum equal to ten per cent of the amount due as attorney's fee, in addition to other sums due, which shall be a further lien secured hereby. Upon the due payment of said indebtedness and the performance of other covenants and agreements hereof by the mortgagor, this mortgage shall become null and void.

The mortgagor, in event of a foreclosure hereunder, hereby waives appraisal of said premises, or not, at the option of the mortgagee to be declared when the petition to foreclose is filed.

Signed and delivered this 28 day of March, 19 88.

Mary Fairbanks Constant Frederic W. Constant  
Mary Fairbanks Constant (community interest only) Frederic W. Constant, owner

STATE OF OKLAHOMA California }  
COUNTY OF MAHON } 35:

INDIVIDUAL ACKNOWLEDGEMENT  
(Oklahoma Form)

Before me, the undersigned, a Notary Public, in and for said County and State, on this 28th day of

March, 19 88, personally appeared Frederic W. Constant and  
Mary Fairbanks Constant

to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they  
executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires Feb. 20, 1990 Elizabeth Picard, Notary Public

IDAHO

## REAL ESTATE MORTGAGE

8817035

KNOW ALL MEN BY THESE PRESENTS:

That Frederic W. Constant (individually) as owner, and Mary Fairbanks Constant  
 (to the extent of her community property interest, if any)

hereinafter called Mortgagor, whether one or more, has mortgaged,  
 and hereby mortgages to GLENFED Financial Corporation, 12720 Hillcrest Road, Suite 700,  
Dallas, Texas 75230

Hereinafter called Mortgagee, whether one or more, the following described real estate and premises, situate in Ada  
County, Idaho ~~XXXXXX~~ to-wit:

STREET ADDRESS: Johnson House  
1002 West Franklin Street, Boise, Idaho

LEGAL DESCRIPTION: Lot 6 and the East half of Lot 5, Block 81 of the  
Boise City Original Townsite, according to the plat  
thereof, filed in Book 1 of plats at Page 1, record  
of Ada County, Idaho

Ada County Idaho ss  
 Request of

*Glenfed Financial*

DATE *4-15-88*

BY *John D. ...*

WITNESSES

*John D. ...*

*John D. ...*

*John D. ...*

*John D. ...*

with all the improvements thereon and appurtenances thereunto belonging; and warrant the title to the same.

This mortgage is given to secure the payment of the principal sum of (\$2,000,000) TWO MILLION NINE HUNDRED THOUSAND  
 dollars, and interest thereon, according to the terms of certain promissory note ~~XXXXXX~~  
 by the corporations listed on the  
 the final payment thereon being due September 28, 1990 attached copy of the Note, marked  
 Exhibit A.

The mortgagor further agrees to maintain insurance acceptable to, and for the benefit of, the mortgagee, upon the buildings on said premises in an amount not less than the indebtedness due the mortgagee. The mortgagor further agrees to pay all taxes and assessments upon said premises before the same become delinquent, and to keep the premises free of any liens or claims which might become prior to the lien hereof. In event of the failure of the mortgagor so to do, the mortgagee may effect insurance or pay such taxes, assessments or other liens, and shall have a lien secured hereby for the amount thereof with interest thereon at the rate of ten per cent, per annum.

In event the mortgagor defaults in the payment of said indebtedness, or fails to perform the other covenants and agreements hereof, the mortgagee may foreclose this mortgage, as provided by law; and as often as any proceedings may be taken to foreclose this mortgage, the mortgagor agrees to pay to the mortgagee a sum equal to ten per cent of the amount due as attorney's fee, in addition to other sums due, which shall be a further lien secured hereby. Upon the due payment of said indebtedness and the performance of other covenants and agreements hereof by the mortgagor, this mortgage shall become null and void.

The mortgagor, in event of a foreclosure hereunder, hereby waives appraisalment of said premises, or not, at the option of the mortgagee to be declared when the petition to foreclose is filed.

Signed and delivered this 15 day of March, 1988.

*Mary Fairbanks Constant* *Frederic W. Constant*  
 Mary Fairbanks Constant (community interest only) Frederic W. Constant, owner

STATE OF CALIFORNIA (California)  
 COUNTY OF CHABIN ss:

INDIVIDUAL ACKNOWLEDGEMENT  
 (MAY 1988)

Before me, the undersigned, a Notary Public in and for said County and State, on this 15th day of  
March, 1988, personally appeared Frederic W. Constant and  
Mary Fairbanks Constant

to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they  
 executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires Feb. 20, 1990 *John D. ...* Notary Public

Compliments of Chicago Fire Insurance Company.

EXHIBIT C page 1 of 3

EXHIBIT 3



## **Business Plan**